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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CHERIEL JENSEN, Plaintiff and Appellant, v. SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, Defendant and Respondent.	H044974 (Santa Clara County Super. Ct. No. CV304960)

On November 8, 2016, 71 percent of voters in Santa Clara County approved a transactions and use tax (sales tax) measure proposed by the Santa Clara Valley Transportation Authority (hereafter VTA) called Measure B. On January 9, 2017, appellant Cheriel Jensen filed a complaint with three causes of action seeking to invalidate the measure. Jensen's first two causes of action alleged Measure B was unlawful, because it did not specify the purposes for which the tax proceeds would be used and it did not contain a requirement that the tax proceeds be used only for those specified purposes. She further requested declaratory or injunctive relief. Lastly, she claimed VTA failed to respond to her public records request made under the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.).[1] VTA demurred to all three causes of action. Following a hearing, the trial court sustained VTA's demurrer without leave to amend and entered judgment in favor of VTA.

[1] Unspecified statutory references are to the Government Code.

Jensen has appealed. On appeal, she mostly reiterates the same arguments she raised below to the trial court. As we explain, we find her arguments pertaining to the validity of Measure B are meritless. We do, however, find she sufficiently stated a cause of action that VTA violated the CPRA when it failed to respond to her request for records. Thus, we reverse the judgment entered in favor of VTA and direct the trial court to enter a new order sustaining VTA's demurrer as to Jensen's first two causes of action and overruling the demurrer as to her third cause of action alleging a violation of the CPRA.

BACKGROUND

1. *VTA and Measure B*

VTA was created in 1972 as a special district following the Legislature's enactment of Public Utilities Code section 100000 et seq. (the Enabling Act). The Enabling Act grants VTA with specific powers related to transportation facilities, transportation services, and transportation-related projects. (Pub. Util. Code, § 100160 et seq.) The Enabling Act also grants VTA limited general powers, such as the right to enter into contracts and the power of eminent domain; however, the exercise of these powers is circumscribed by the powers granted to VTA in its Enabling Act. (Pub. Util. Code, §§ 100120, 100131.) Most relevant here, the Enabling Act grants VTA the authority to adopt sales tax ordinances provided they are authorized by voters "in accordance with Article XIII C of the California Constitution." (Pub. Util. Code, § 100250.)

The California Constitution provides that "[a]ll taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes." (Cal. Const., art. XIII C, § 2, subd. (a).) Article XIII C specifically states that "[n]o local government may impose, extend, or increase any special tax unless and until

that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved." (Cal. Const., art. XIII C, § 2, subd. (d).)

The first three paragraphs of Measure B state in pertinent part:

"To repair potholes and fix local streets; finish the BART extension through downtown San Jose and to Santa Clara; improve bicycle and pedestrian safety; increase Caltrain capacity, in order to ease highway congestion, and improve safety at crossings; relieve traffic on the expressways and key highway interchanges; and enhance transit for seniors, students, low-income, and disabled, shall the Board of Directors of the [VTA] enact a [sales tax] . . . collection of such tax to be limited to thirty years?

"VTA shall be the administrator of the tax, shall establish a program and develop program guidelines to administer the tax revenues received from the enactment of this measure (the 'Program'). Tax revenues received for the 30-year life of the tax . . . shall be referred to herein as 'Program Tax Revenues.'

"VTA shall allocate the Program Tax Revenues to the following categories of transportation projects: Local Streets and Roads; BART Phase II; Bicycle and Pedestrian; Caltrain Grade Separation; Caltrain Capacity Improvements; Highway Interchanges; County Expressways; SR 85 Corridor; and Transit Operations."

The text of Measure B describes an estimated tax revenue or present day purchasing power of approximately $6.3 billion. It then allocates the $6.3 billion in projected dollars among various project categories, such as local streets and roads, BART, and other transportation initiatives. As set forth, "[t]he estimated amounts for each category, divided by $6.3 Billion, establishes ratios for the allocation among the categories. The VTA Board of Directors may modify those allocation amounts following the program amendment process outlined in this resolution." The project categories and allocations include local street and roads ($1.2 billion), BART Phase II ($1.5 billion,

capped at a maximum of 25 percent of Program Tax Revenues), bicycle/pedestrian ($250 million), Caltrain grade separation ($700 million), Caltrain corridor capacity improvements ($314 million), highway interchanges ($750 million), county expressways ($750 million), state route 85 corridor ($350 million), and transit operations ($500 million).

Following an explanation of the various project categories, Measure B then provides: "If approved by a 3/4 majority of the VTA Board of Directors, and only after a noticed public meeting in which the County of Santa Clara Board of Supervisors, and the city council of each city in Santa Clara County have been notified at least 30 days prior to the meeting, VTA may modify the Program for any prudent purpose, including to account for the results of any environmental review required under the California Environmental Quality Act of the individual specific projects in the Program; to account for increases or decreases in federal, state, and local funds, including revenues received from this tax measure; to account for unexpected increase or decrease in revenues; to add or delete a project from the Program in order to carry out the overall purpose of the Program; to maintain consistency with the Santa Clara Valley Transportation Plan; to shift funding between project categories; or to take into consideration new innovations or unforeseen circumstances."

Measure B appeared on the ballot in Santa Clara County on November 8, 2016, and passed with 71 percent of voters approving the measure.

2. *Jensen's Complaint*

On January 9, 2017, Jensen filed a verified complaint in propria persona alleging causes of action for "(1) invalidation of VTA tax Measure B, (2) declaratory and injunctive relief and (3) compelling compliance with Public Records Act."

Jensen's first cause of action alleged she had requested public records from the VTA seeking "any record that contains the legal authority for Measure B."

VTA, however, did not responded to her request. Moreover, the County Counsel's impartial analysis of Measure B, included in the sample ballot pamphlet, does not cite to any legal authority for the measure.

According to Jensen's complaint, the County Counsel's impartial analysis, without citing to a specific statute, stated that "[s]tate law requires the VTA to state the specific purposes for which the sales tax proceeds will be used, and the VTA must spend the proceeds of the tax only for these purposes." Jensen, however, alleged the text of Measure B did not comply with the County Counsel's analysis because of the provision in Measure B that permits VTA to "modify the Program for any prudent purpose," which would not confine VTA's use of the tax proceeds. Thus, Jensen's complaint alleged "more broadly (than [previously described]) that the measure is unauthorized by law." Since Measure B has no severability clause, Jensen alleged there was no way to tell if the measure would have been passed by the electorate without the clause permitting the "shifting of the use of proceeds" as described above. The complaint did not specify the statutes that Measure B purportedly violated.

Jensen's second cause of action, entitled "ultra vires," incorporated the allegations from her first cause of action. She additionally alleged she was entitled to declaratory and injunctive relief since Measure B was not authorized by law.

Lastly, Jensen's third cause of action dealt with VTA's failure to respond to her request for public records. Jensen claimed VTA's lack of response to her request for records containing legal authority for Measure B violated the CPRA. Thus, she requested a court order for declaratory and injunctive relief requiring VTA to comply with the CPRA.

Jensen attached to her complaint the text of Measure B as found in the sample ballot, which included the County Counsel's impartial analysis. She also attached the request for records she had made with VTA. Jensen's request was in the form of an

e-mail she had sent to the VTA board secretary with the subject line, "California Public Records Act Request, December 14, 2016." In her e-mail, Jensen wrote: "Please provide each and every statute(s) which authorized the VTA Board to place Measure B on the November 8, 2016 ballot. I hereby ask the question phrased as a request for a copy of any public record(s), not exceeding 3 pages, that identifies each such statute. You may simply write me an email containing the information. Please respond by email."

3. *The Summons*

On February 15, 2017, Jensen, who by that time was represented by counsel, obtained a court order for publication of summons under the validation statutes (Code Civ. Proc., § 860 et seq.).[2] Under the validation statutes, a public agency can seek judicial determination of the validity of some matter, such as an ordinance, resolution, or other action taken by the agency. (Code Civ. Proc., § 860.) If the agency does not seek validation within the time required, any "interested person" can file what is called a reverse validation action to test the validity of the matter. (Code Civ. Proc., § 863.) Jurisdiction of "all interested parties" in a validation action is obtained by publishing a summons for the time statutorily prescribed in section 6063. (Code Civ. Proc., § 861.)

4. *VTA's Demurrer and Request for Judicial Notice*

On March 20, 2017, VTA filed a demurrer to Jensen's complaint, arguing she failed to state viable causes of action. As to Jensen's first cause of action, VTA argued that its Enabling Act specifically authorized it to place a sales tax like Measure B before the voters. Furthermore, VTA argued that it is a special district; thus, the tax proposed by Measure B was per se a special tax and could not be construed to be a general tax. VTA noted that Jensen had not cited specific statutes in her complaint. However, VTA argued that if it was required to comply with the requirements of section 53724, subdivision (a),

[2] Jensen's complaint did not mention that her action was brought under the validation statutes.

which requires that taxes subject to the requirements set forth under sections 53722 or 53723 shall, if it is a special tax, set forth "the purpose or service for which its imposition is sought," it had readily done so in Measure B. (§ 53724, subd. (a).)

As to Jensen's second cause of action for declaratory relief, VTA argued she failed to state a claim because Measure B was lawful. Furthermore, Jensen did not plead facts supporting either declaratory or injunctive relief.

Lastly, with regards to Jensen's third cause of action seeking VTA's compliance with the CPRA, VTA insisted her e-mailed request did not seek disclosable, preexisting public records. VTA argued Jensen's e-mail essentially asked it to create *new* records and conduct legal research, which it was not obligated to do.

Finally, VTA insisted Jensen would be unable to cure the defects with her complaint with an amendment and requested the court sustain its demurrer without leave to amend. That same day, VTA requested the trial court take judicial notice of facts and statutes related to the creation of the VTA and its powers.

5. *Jensen's Opposition*

Jensen opposed VTA's demurrer. Jensen claimed her first cause of action seeking to invalidate Measure B was predicated on the validation statutes (Code Civ. Proc., § 860 et seq.). She reiterated that according to the County Counsel's impartial analysis of the measure, VTA was required by state law to specify the purposes for which the sales tax proceeds would be used, and VTA was required to use the proceeds only for those specified purposes. Jensen insisted the language of the County Counsel's analysis implied the County Counsel believed that section 50075.1 applied, which requires a statement indicating the specific purpose of a special tax and a requirement that the tax proceeds be applied only to the identified specific purpose. (§ 50075.1, subds. (a) & (b).) Section 50075.1 was not mentioned in Jensen's initial complaint or in VTA's demurrer.

Thus, Jensen claimed the language of Measure B, which contains the provision permitting VTA to alter the "Program" for "any prudent purpose," rendered the measure unlawful under section 50075.1. Furthermore, Jensen argued that even if VTA was correct in that section 53724 applied, Measure B would still be unlawful given VTA's ability to alter Measure B's "Program."

Jensen explained her second cause of action for declaratory and injunctive relief was important only if the first cause of action invalidating Measure B under the validation statutes was found inapplicable. However, she stated she wished to maintain her cause of action, which she believed could be accomplished by "judicial notice of the arguments in support of the demurrer(s) and this response."

She argued her third cause of action, based on VTA's alleged violation of the CPRA, did not ask VTA to create new records. Jensen claimed her e-mailed request was for *any* existing record containing the information sought, and a copy of a statute or a paper retained by an agency that refers to a statute is a public record that would be subject to disclosure. Furthermore, Jensen insisted that if VTA had no disclosable records, it should have informed her of that fact through writing.

6. *VTA's Reply to Jensen's Opposition*

VTA replied to Jensen's opposition. Again, VTA argued that Jensen failed to state viable causes of action and failed to specify what facts she would plead to cure the defects with her complaint. VTA reiterated its arguments in its demurrer and addressed the arguments raised by Jensen in her opposition.

Specifically, VTA argued that section 50075.1, which Jensen cited in her opposition, was part of legislation intended to enable *local* agencies to exercise full powers under article XIII A of the California Constitution, or Proposition 13. VTA insisted that taken in context, Measure B was sufficiently specific under section 50075.1, because VTA is a special district.

VTA also addressed Jensen's claims regarding its alleged violation of the CPRA. VTA reiterated it believed Jensen's request was not a request for public documents. Rather, VTA interpreted Jensen's request as asking VTA to conduct legal research on her behalf, which VTA was not obligated to do.

7. *The Hearing*

On April 20, 2017, the trial court held a hearing on VTA's demurrer. The trial court asked Jensen what specific facts she would include in an amended complaint. Jensen explained her complaint alleged Measure B was unlawful based on "the switch thing"—the provision of Measure B that permits VTA to change the "Program" based on a vote of the Board of Directors—and also that she could "allege[] more broadly" that Measure B was unlawful. Jensen cited to section 50075.5, subdivisions (a) and (b).

As to her cause of action alleging a violation of the CPRA, Jensen stated she would amend her complaint to allege she did not receive any response to her public records request.[3]

8. *The Order and Judgment*

On April 27, 2017, the trial court issued an order granting VTA's demurrer without leave to amend as to Jensen's three causes of action. Preliminarily, the trial court granted VTA's requests for judicial notice of facts and statutes related to its creation. The court, however, denied VTA's request for judicial notice of a printout of VTA's Web site detailing the agency's purpose and a statement of all votes cast in the election approving Measure B. It then proceeded to address the merits of VTA's demurrer.

First, the trial court concluded Jensen's first and second causes of action were virtually indistinguishable. Second, the trial court rejected Jensen's claim that Measure B failed to identify the specific purpose for its special tax. The trial court determined the

[3] Her complaint, however, already alleged she failed to receive a response from VTA.

first paragraph of Measure B specifically set forth the purpose of the tax, which was to " 'repair potholes and fix local streets; finish the BART extension through downtown San Jose and to Santa Clara; improve bicycle and pedestrian safety; increase Caltrain capacity, in order to ease highway congestion, and improve safety at crossings; relieve traffic on the expressways and key highway interchanges; and enhance transit for seniors, students, low-income, and disabled individuals.' "

The trial court also rejected Jensen's claim that Measure B permitted VTA to switch use of the special tax proceeds to "any prudent purpose." The trial court determined that based on the plain language of the measure, the term "Program" is defined in Measure B as the "program and guidelines [VTA] will develop to 'administer the tax revenues.' " The trial court surmised the "Program" is *not* the stated purpose of the special tax. Rather, it "sets forth the manner and procedures through which the funds will be administered to accomplish each stated purpose." Thus, the part of Measure B that permits VTA to "modify the Program for any prudent purpose, including to account for the results of any environmental review" does not render Measure B unlawful. The trial court concluded Measure B does not permit VTA to amend the purpose of the special tax at any time; it only allows for VTA to amend the "*Program*."

The trial court then found Jensen's theory of invalidity was simply incorrect, pointing to the statutory authorities cited by VTA as granting it the authority to propose, enact, and collect taxes to fund transportation projects. In its order, the trial court did not specifically cite to section 50075.1.

Finally, the court addressed Jensen's claim that VTA violated the CPRA. The court stated it believed that Jensen's complaint did not allege whether she received any response or received a response that failed to comply with the CPRA. Furthermore, the court found that Jensen's request essentially asked VTA to compile a list of statutes and send the information to her via e-mail, which it was not required to do.

Thereafter, the court held that Jensen failed to articulate how she could amend her complaint to state a viable claim either in her opposition papers or during the hearing.[4]

On July 19, 2017, the trial court entered a judgment in favor of VTA and declared Measure B valid.[5] The court further awarded VTA its costs.

DISCUSSION

On appeal, Jensen reiterates the same arguments she made below to the trial court. She insists the trial court erred when it sustained VTA's demurrer to all three of her causes of action, because she sufficiently stated a claim that Measure B was unlawful since it did not specify the purposes for which the tax proceeds could be used. She further argues she sufficiently alleged VTA violated the CPRA when it failed to respond to her public records request for statutes authorizing VTA to place Measure B on the ballot.

1. *Legal Principles and Standard of Review*

We review an order sustaining a demurrer de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) The facts alleged in the pleading are deemed to be true, but contentions, deductions, and conclusions of law are not. (*Hill v. Roll Internat. Corp.* (2011) 195 Cal.App.4th 1295, 1300.) In addition to the

[4] The court's order also briefly mentioned the validation statute, Code of Civil Procedure section 860. The court asserted that Jensen did not articulate how she could convert the action into a reverse validation case since she did not follow the mandatory publication requirements as set forth under Code of Civil Procedure section 863. The trial court's order failed to recognize the fact that Jensen had complied with the validation statute's publication requirement. However, the court proceeded to address the merits of the viability of Jensen's complaint.

[5] There was some delay between the court's issuance of its order granting VTA's demurrer and its entry of judgment in favor of VTA. VTA made two ex parte applications requesting the court enter judgment in its favor.

complaint, we also may consider matter subject to judicial notice. (*Ibid*.) Facts that are subject to judicial notice trump contrary allegations in the pleadings. (*Ibid*.) Facts appearing in exhibits attached to the complaint are also accepted as true and are given precedence to the extent they contradict the allegations. (*Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627.) "Statutory interpretation is a question of law subject to our independent review." (*Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 524.)

"When a demurrer is sustained without leave to amend, [we] must determine whether there is a reasonable probability that the complaint could have been amended to cure the defect; if so, [we] will conclude that the trial court abused its discretion by denying the plaintiff leave to amend. [Citation.] The plaintiff bears the burden of establishing that it could have amended the complaint to cure the defect." (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1035.)

2. *First and Second Causes of Action Alleging the Unlawfulness of Measure B*

Jensen insists the trial court erred when it sustained VTA's demurrer as to her first and second causes of action without leave to amend. She insists she could have amended her causes of action to allege Measure B failed to comply with the requirements set forth under section 50075.1, because it did not provide a statement indicating the specific purpose of the special tax and did not specify that the proceeds of the special tax be applied only to the identified special purpose. Jensen also notes that section 53724, which was cited by VTA below, provides that revenues generated by a special tax can only be used for the purpose or service for which it was imposed. Thus, she insists the provision in Measure B permitting VTA's Board of Directors to make changes to the "program" as defined in Measure B is unlawful. As we explain, we find no merit in Jensen's claims.

a. **Jensen's First and Second Causes of Action are Substantively the Same**

Preliminarily, we note we discuss Jensen's first and second causes of action together, because they are substantively the same. Jensen's first cause of action alleges Measure B is unlawful. Her second cause of action similarly alleges Measure B is unlawful and incorporates the same facts as her first cause of action, but further requests declaratory and injunctive relief. Thus, if Jensen fails to sufficiently state that Measure B is unlawful, *both* causes of action will fail on the merits.

b. **Governing Legal Principles**

Next, we briefly review section 50075.1, which is rooted in the electorate's passage of Proposition 13, an initiative measure which added article XIII A to the California Constitution in 1978. (*Borikas v. Alameda Unified School Dist*. (2013) 214 Cal.App.4th 135, 142.) We also briefly discuss the differences between a general tax, special tax, and special districts, and the origins of section 53724.

The general purpose of Proposition 13 was to give real property owners tax relief by imposing limitations on the tax rate applicable to real property, restrict the valuation and assessment of real property, create strict voting requirements for legislative changes to the tax rates or methods of computation, and eliminate the right of state and local entities, including special districts, to impose ad valorum taxes on real property or transaction or sales taxes on the sale of real property. (*California Bldg. Industry Assn. v. Governing Bd*. (1988) 206 Cal.App.3d 212, 219 (*California Bldg. Industry Assn*.).)

Additionally, Proposition 13 restricted local entities from raising revenues by means of special taxes unless the taxes are approved by a two-thirds vote of qualified voters of the local entity. (*California Bldg. Industry Assn., supra,* 206 Cal.App.3d at p. 220.) At the time it was enacted, the Legislative Counsel noted that existing constitutional provisions would prevent new special taxes unless the Legislature specifically permitted placing them for approval before the voters. (*Id*. at p. 227.)

Most likely, this was a reference to article XIII, section 24, subdivision (a) of the California Constitution which states that "[t]he Legislature may not impose taxes for local purposes but may authorize local governments to impose them."

In 1978, section 50075 was enacted by the Legislature to provide statutory authority for "cities, counties, and districts . . . to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution."

"Apparently unhappy with what they viewed as legislative efforts to dilute the effect of article XIII A, its backers submitted another initiative proposal, Proposition 62. On November 4, 1986, that measure was approved by California voters. It added eleven sections to the Government Code (commencing with § 53720 [and including § 53724]), all directed to the issue of taxation by local governments and districts." (*California Bldg. Industry Assn., supra*, 206 Cal.App.3d at p. 223.)

Proposition 62 was a statutory initiative and did not amend the California Constitution. The statutes enacted by Proposition 62 defined "special taxes" as "taxes imposed for specific purposes," (§ 53721) and required that all new local taxes imposed by a "local government or district" (§ 53722) be approved by the local electorate. A general tax must be authorized by two-thirds of the legislative body of the taxing entity but can be approved by a majority of the local voters. (§§ 53723, 53724, subd. (b).) In contrast, a special tax may be authorized by a majority vote of the legislative body of the local taxing entity but can be approved by a two-thirds majority of local voters. (§ 53722.) Section 53724, subdivision (e) provides that "[t]he revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever."

In 1996, articles XIII C and XIII D were added to the California Constitution by voters when they approved Proposition 218. (*Weisblat v. City of San Diego* (2009) 176

Cal.App.4th 1022, 1038.) "Proposition 218, like Proposition 13, limits the power of local governments to impose taxes." (*Id*. at p. 1039.)

Unlike Proposition 13, Proposition 218 set forth numerous definitions. Article XIII C defines both general taxes and special taxes and states that "[a]ll taxes imposed by any local government shall be deemed to be either general taxes or special taxes." (Cal. Const., art. XIII C, § 2, subd. (a).) Furthermore, "[s]pecial purpose districts or agencies, including school districts, shall have no power to levy general taxes." (*Ibid*.) A "special district" is an "agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies." (Cal. Const., art. XIII C, § 1, subd. (c).) A "general tax" is "any tax imposed for general governmental purposes." (Cal. Const., art. XIII C, § 1, subd. (a).) A "special tax" is "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." (Cal. Const., art. XIII C, § 1, subd. (d).)

Article XIII C provides that "[n]o local government may impose, extend, or increase any special tax" until the matter is "submitted to the electorate and approved by a two-thirds vote." (Cal. Const., art. XIII C, § 2, subd. (d).)

Section 50075.1, which was added by the Legislature following the passage of Proposition 218, provides that "[o]n or after January 1, 2001, any local special tax measure that is subject to voter approval that would provide for the imposition of a special tax by a local agency shall provide accountability measures that include, but are not limited to, all of the following: [¶] (a) A statement indicating the specific purposes of the special tax. [¶] (b) A requirement that the proceeds be applied only to the specific purposes identified pursuant to subdivision (a). [¶] (c) The creation of an account into which the proceeds shall be deposited. [¶] (d) An annual report pursuant to Section 50075.3." "Local agency" as used in section 50075.1 is defined in

section 50075.5 and includes special districts. "Specific purpose" is not defined in the statute. Section 50076 provides that a special tax is *not* "any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes." Section 50075.1 and section 50076 do not provide a more specific definition of "special tax."

c. **Section 50075.1 is Applicable to Measure B**

Jensen argues section 50075.1 applies and renders Measure B unlawful, because Measure B does not comply with section 50075.1's requirements. VTA argues section 50075.1 is inapplicable to Measure B, because it applies only to those taxes that are enacted under authority set forth under article XIII A of the California Constitution, not article XIII C. VTA insists the authority it had to impose special taxes was vested in it by its Enabling Act, which gives it the power to adopt sales tax ordinances provided they are authorized by voters "in accordance with Article XIII C of the California Constitution." (Pub. Util. Code, § 100250.) We disagree with VTA's claim and find section 50075.1 is applicable to Measure B.

As we previously discussed, while article XIII C was added by Proposition 218, section 50075.1 was enacted by the Legislature *after* Proposition 218 was passed by voters. Section 50075.1 is part of Government Code title 5, division 1, part 1, chapter 1, article 3.5. Section 50075 sets forth the Legislature's intent with respect to article 3.5. It states: "It is the intent of the Legislature to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution."

We find VTA misreads section 50075. As we recounted in our overview of the history of Proposition 13, Proposition 62, and Proposition 218, section 50075 was enacted by the Legislature as *enabling* legislation. (*California Bldg. Industry Assn.*, *supra*, 206 Cal.App.3d at p. 223.) As we previously stated, article XIII, section 24 of the

California Constitution states in pertinent part that "[t]he Legislature may not impose taxes for local purposes but may authorize local governments to impose them." Accordingly, section 50075 was enacted by the Legislature to vest "cities, counties, and districts" with the authority to impose new special taxes with legislative approval following the voter's approval of article XIII A.

Thus, section 50075 should not be read as a declaration of the Legislature's intent to limit the provisions of article 3.5 to only those taxes enacted under the authority of article XIII A of the California Constitution. In fact, such a construction would make little sense. Article XIII A does *not* grant authority to public entities to tax. (*California Bldg. Industry Assn., supra,* 206 Cal.App.3d at pp. 226-227.) Rather, it creates *restrictions* on the enactment of various taxes. Furthermore, the text of section 50075.1 itself belies VTA's claim. Section 50075.1 states that it applies to "any local special tax measure" enacted by a "local agency." The term "local agency" is defined in section 50075.5 and includes special districts like VTA.

Finally, we note VTA's Enabling Act's statement that it is given the power to adopt sales tax ordinances provided they are authorized by voters "in accordance with Article XIII C of the California Constitution" (Pub. Util. Code, § 100250) does *not* mean VTA's authority to tax somehow derives from article XIII C. Article XIII C, which defines special taxes and the requirement that the special tax have two-thirds approval, merely sets forth the procedures and requirements that VTA must follow to enact a special tax. As VTA itself notes, its authority to tax was granted to it in Public Utilities Code section 100250.

In sum, we find no merit in VTA's claim that section 50075.1 is inapplicable to Measure B. The plain language of section 50075.1 refutes VTA's claim.

d. **Measure B Does Not Violate Section 50075.1's Requirement of a Statement Indicating the Specific Purpose of the Special Tax**

As we previously indicated, Jensen's complaint did not allege Measure B violated a specific statute. However, below to the trial court and on appeal, she claims she could have amended her complaint to state Measure B violated section 50075.1, which requires: "(a) A statement indicating the specific purposes of the special tax. [¶] (b) A requirement that the proceeds be applied only to the specific purposes identified pursuant to subdivision (a)." (§ 50075.1.)

Jensen alleges Measure B does *not* indicate the specific purpose of the special tax and contains only a statement of general purpose. She argues the first paragraph, beginning with "[t]o repair potholes and fix local streets," is so broad that it would permit the VTA to use it for *any* transportation-related expenditure. The third paragraph of Measure B is more specific, providing that "VTA shall allocate the Program Tax Revenues to the following categories of transportation projects: Local Streets and Roads; BART Phase II; Bicycle and Pedestrian; Caltrain Grade Separation; Caltrain Capacity Improvements; Highway Interchanges; County Expressways; SR 85 Corridor; and Transit Operations."

"Specific purpose" as used in section 50075.1 is undefined. Given the context of the various statutes and constitutional amendments proliferated by Proposition 13, Proposition 62, and Proposition 218, we find it helpful to look to the statutory scheme as a whole when we interpret the meaning of the term. That is because when construing statutory language, we look to the language of the statute itself, but must consider it in the context of the entire statute and the "statutory scheme of which it is a part." (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388.)

To determine what a "specific purpose" entails, we turn to article XIII C of the California Constitution, which was enacted by the voters with Proposition 218.[6] According to our Constitution, a *special tax* is, by definition, one that is imposed for specific purposes. (Cal. Const., art. XIII C, § 1, subd. (d).) This is in contrast to a *general tax*, which is, by definition, a tax imposed for general governmental purposes. (Cal. Const., art. XIII C, § 1, subd. (a).) It follows that a special tax's "specific purpose" would be any purpose *other* than a general governmental purpose. Moreover, there is no requirement that a special tax be limited to just *one* specific purpose. Courts have routinely held that special taxes may have multiple specific purposes. (*Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178, 1186 (*Roseville*); *Monterey Peninsula Taxpayers Assn. v. County of Monterey* (1992) 8 Cal.App.4th 1520, 1535.)

Thus, as written, Measure B contains a statement indicating the *specific purpose* of the tax. The first and third paragraphs of Measure B adequately states the various specific purposes that the tax proceeds may be used for. Jensen's claim that these paragraphs merely set forth various "general purposes" is without merit. The first paragraph of Measure B does not permit the funds to be used for *general governmental purposes*. (*Coleman v. County of Santa Clara* (1998) 64 Cal.App.4th 662, 666, 669-670 [sales tax imposed for " 'general county purposes' " is a general tax].)

We acknowledge the purposes set forth in Measure B are broad and would permit VTA to use the tax proceeds for a wide range of transportation-related initiatives. However, the breadth of Measure B's stated purposes does not invalidate the measure or transform it into a general tax. For example, in *Neilson v. City of California City* (2005)

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[6] Section 50075.1 was separately added by the Legislature, but, as we previously illustrated, it is still part of the same overall statutory scheme relating to restrictions and requirements for taxes that started with the enactment of Proposition 13.

133 Cal.App.4th 1296, the appellate court held that a statement that a special parcel tax would be used to " 'pay for police, fire and recreational services, and to repair streets, parks, water line replacement and repair, and building maintenance' " demonstrated the tax was a *special tax* for specific purposes, not a tax for general governmental purposes. (*Id*. at p. 1302.) Similarly, the court in *Roseville* noted that a tax imposed for " 'police, fire, parks and recreation or library services' " was, "[o]n its face," a special tax as understood under article XIII C of the California Constitution. (*Roseville*, *supra*, 106 Cal.App.4th at p. 1186.) In fact, the specific purposes of the taxes discussed in *Neilson* and *Roseville* were even *less* specific than the purposes set forth in Measure B.

Jensen argues that even if the text of Measure B sets forth specific purposes, the measure is unlawful because of the subsequent provision permitting the VTA to alter the "Program" for "any prudent purpose." Jensen construes this provision as permitting VTA to direct tax proceeds away from Measure B's stated purposes. We disagree and believe the trial court correctly concluded that Jensen's argument plainly misreads the plain text of Measure B. The provision permitting VTA to make modifications to the "Program" does not permit VTA to alter the *purposes* of the tax. Measure B defines the "Program" as the guidelines and criteria VTA shall establish "to administer the tax revenues received from the enactment of this measure." Measure B's "Program" is the manner and procedures through which VTA will allocate funds and manage the tax revenue. In other words, this provision does not permit VTA to steer Measure B funds away from its stated purposes.[7]

[7] Based on our conclusion, we need not address Jensen's claim regarding the severability of this part of Measure B.

Thus, Jensen's complaint fails to state a claim that Measure B violates section 50075.1, subdivision (a).[8]

e. **Measure B Does Not Violate Sections 50075.1 & 53724's Requirement That The Special Tax be Applied Only to its Identified Specific Purposes**

We also do not believe Jensen's complaint can be salvaged by amending it to allege a violation of section 50075.1, subdivision (b), which states applicable special taxes must incorporate accountability measures that include "[a] requirement that the proceeds be applied only to the specific purposes identified pursuant to subdivision (a)."

The text of Measure B already dictates the proceeds from the special tax must be applied only to its identified specific purposes. As we previously described, the third paragraph of Measure B states that "VTA *shall* allocate the Program Tax Revenues to the following categories of transportation projects: Local Streets and Roads; BART Phase II; Bicycle and Pedestrian; Caltrain Grade Separation; Caltrain Capacity Improvements; Highway Interchanges; County Expressways; SR 85 Corridor; and Transit Operations." (Italics added.)

Typically, in the context of statutory interpretation " 'shall' is mandatory and 'may' is permissive unless the context requires otherwise." (*Walt Rankin & Associates, Inc. v. City of Murrieta* (2000) 84 Cal.App.4th 605, 614.) In this context, we believe the use of the term "shall" imposes a mandatory duty. There is nothing in Measure B that would suggest it is permissive and VTA would have the ability to use its funds for purposes not specified in the measure. As we discussed, *infra*, Measure B's provision permitting the VTA to alter the "Program" does not change our analysis. Altering the

[8] In its respondent's brief, VTA argues that because it is a special district it can *only* levy special taxes by law. We do not reach the merits of this argument, because we conclude that Measure B already contains an adequate statement of the specific purposes intended for the revenues generated by Measure B, and it is therefore by definition a special tax.

"Program" would not divert the funds generated by the special tax to other purposes aside from the purposes already identified.

For these reasons, Jensen's complaint does not state a valid claim that Measure B is unlawful because it violates section 50075.1, subdivision (b). And for the same reasons, Measure B would also comply with section 53724, which requires that "[t]he revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever." (*Id*., subd. (e).)

f. **Jensen Does Not Show the First and Second Causes of Action Could Have Been Amended to Cure the Defects**

As the plaintiff, Jensen bore the burden to demonstrate her causes of action could be amended to cure the defects. (*Berg & Berg Enterprises, LLC v. Boyle*, *supra*, 178 Cal.App.4th at p. 1035.) In her moving papers and during the hearing on VTA's demurrer, Jensen claimed only that she could allege Measure B was unlawful under section 50075.1. Having found that Measure B does not violate section 50075.1, subdivisions (a) and (b), we find Jensen has not satisfied her burden. Thus, the trial court did not err in sustaining VTA's demurrer to her first two causes of action without leave to amend.

3. *Third Cause of Action Alleging Violation of the CPRA*

Jensen argues she sufficiently stated a cause of action alleging a violation of the CPRA. Her complaint alleges she e-mailed the VTA board secretary requesting "each and every statute(s) which authorized the VTA Board to place Measure B on the November 8, 2016 ballot." Her e-mail also asked that her "question [be] phrased as a request for a copy of any public record(s) . . . that identifies each such statute." Jensen alleged that VTA never responded to her request. As we explain, we find the court erred by sustaining VTA's demurrer to this cause of action.

a. **Overview of the CPRA**

"Enacted in 1968, CPRA declares that 'access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.' (§ 6250.) In 2004, voters made this principle part of our Constitution. A provision added by Proposition 59 states: 'The people have the right of access to information concerning the conduct of the people's business, and, therefore, . . . the writings of public officials and agencies shall be open to public scrutiny.' (Cal. Const., art. I, § 3, subd. (b)(1).)" (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 615.)

A "public record" under the CPRA "includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (§ 6252, subd. (e).) This "definition is broad and ' " 'intended to cover every conceivable kind of record that is involved in the governmental process.' " ' " (*Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001, 1006.)

CPRA provides that "each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person . . . ." (§ 6253, subd. (b).) Furthermore, "[e]ach agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor." (§ 6253, subd. (c).)

" '[A] person who seeks public records must present a reasonably focused and specific request, so that the public agency will have an opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies.' " (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227.) If agencies can locate disclosable records with reasonable effort, they must comply with the request. (*Ibid.*)

However, agencies are not required to create new records to comply with a CPRA request. (*Ibid*.)

"Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under" the CPRA. (§ 6258.)

b. **Jensen Sufficiently Alleged a Violation of the CPRA**

In her complaint, Jensen alleged that even if VTA believed her request was untenable under the CPRA, it was obligated to respond to her request and inform her of its denial. As we have stated, the CPRA mandates that "[e]ach agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor." (§ 6253, subd. (c).) Section 6255, subdivision (b) provides that "[a] response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing."

VTA takes the position that Jensen's claim necessarily fails if we conclude she did not request preexisting, responsive records. We disagree. The plain text of section 6253, subdivision (c) requires public agencies to respond to *all* requests for public records within 10 days. Even if VTA believed Jensen's request did not seek copies of disclosable, preexisting public records, VTA was still compelled to issue her a denial under the CPRA. Its failure to do so violates section 6253, subdivision (c). VTA does not contest Jensen's allegation that it failed to respond to her public records request. Furthermore, the sustaining of a demurrer is proper only if the facts as pleaded do not state a viable cause of action as a matter of law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311,

318.) We accept as true Jensen's allegation that VTA did not respond, and in so doing we conclude she sufficiently stated a cause of action for a violation of the CPRA.[9]

Based on the foregoing, we need not—and should not—address whether Jensen's request sufficiently identified disclosable public records under the CPRA. Whether Jensen requested disclosable public records is an issue that requires us to resolve questions of fact, not law. We disagree with the trial court that the only interpretation of Jensen's request was that she asked VTA to conduct legal research on her behalf and compile a list of statutes. Jensen's request was ambiguously worded. Another interpretation of her request, as phrased, is that she sought all public records related to the validity of Measure B and VTA's authority to tax, including public records of VTA's decision to place Measure B on the ballot.[10] What interpretation to give to Jensen's request is a factual determination that should be made by a trier of fact. Thus, we find it

[9] As stated in our summary of the facts, the trial court concluded below that Jensen did not allege whether she received a response to her records request or if she received a response that was not compliant with the CPRA. We believe the trial court's statement incorrectly characterizes Jensen's allegations. Jensen's complaint alleges that "[n]o response was ever received" to her public records request.

[10] In fact, Jensen contests VTA's interpretation of her records request and asserts she sought *any* public records that referenced or contained copies of statutes that referred to VTA's legal authority to tax or place Measure B on the statute. VTA argues to the extent Jensen's request can be construed as a request for any public record of legal analysis conducted by VTA's lawyers when drafting Measure B, the attorney-client privilege is applicable to public records requests under the CPRA and would generally exempt these types of records from disclosure. (*Agricultural Labor Relations Bd. v. Superior Court* (2016) 4 Cal.App.5th 675; § 6254, subd. (k); Evid. Code, § 954.) In this case, VTA never responded to Jensen's request, no records were disclosed, and the trial court made no factual findings as to whether any documents were exempted work product covered by privilege.

is not amenable to resolution by a demurrer.[11] (*Alexander v. Exxon Mobil* (2013) 219 Cal.App.4th 1236, 1240.)

In sum, Jensen's complaint sufficiently stated a cause of action that VTA violated the CPRA, because VTA failed to issue her a written denial.

DISPOSITION

The judgment is reversed. The trial court is directed to sustain VTA's demurrer as to Jensen's first two causes of action and to overrule VTA's demurrer as to Jensen's third cause of action for a violation of the CPRA. The parties are to bear their own costs on appeal.

[11] If the facts are undisputed, "the interpretation of the [California] Public Records Act, and its application to undisputed facts, present questions of law . . . ." (*BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 750.)

Premo, J.

WE CONCUR:

Greenwood, P.J.

Grover, J.

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